

DOCKET FILE COPY ORIGINAL

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JUN 25 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the Local)
Competition Provisions of the)
Telecommunications Act of 1996)

CC Docket No. 96-98

Joint Petition of BellSouth, SBC and Verizon)
For Elimination of Mandatory Unbundling of)
High-Capacity Loops and Dedicated Transport)

REPLY COMMENTS OF METROMEDIA FIBER NETWORK SERVICES INC.

Jonathan E. Canis
Ross A. Buntrock
KELLEY DRYE & WARREN, LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
(202) 955-9600

Counsel to MFN

June 25, 2001

No. of Copies rec'd
List ABCDE

057

TABLE OF CONTENTS

| | Page |
|---|------|
| I. INTRODUCTION AND SUMMARY | 1 |
| II. AS A PRECONDITION TO THE REMOVAL OF ANY TRANSPORT UNE, ILECS MUST DEMONSTRATE MEANINGFUL AND EFFECTIVE ACCESS TO COMPETITIVE TRANSPORT | 4 |
| A. MFN Provides Competitive Transport Products Using a Variety of Arrangements | 6 |
| III. THE COMMISSION SHOULD MAKE CLEAR THAT UNFETTERED ACCESS TO ILEC FACILITIES USED TO PROVIDE COMPETITIVE TRANSPORT IS A CONDITION PRECEDENT TO A FINDING THAT A TRANSPORT UNE MAY BE “DELISTED” | 11 |
| IV. CONCLUSION | 13 |

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

| | | |
|--|---|---------------------|
| In the Matter of |) | |
| |) | |
| Implementation of the Local |) | |
| Competition Provisions of the |) | CC Docket No. 96-98 |
| Telecommunications Act of 1996 |) | |
| |) | |
| Joint Petition of BellSouth, SBC and Verizon |) | |
| For Elimination of Mandatory Unbundling of |) | |
| High-Capacity Loops and Dedicated Transport |) | |

REPLY COMMENTS OF METROMEDIA FIBER NETWORK SERVICES INC.

Metromedia Fiber Network Services, Inc. ("MFN"), through its attorneys, hereby submits these reply comments in response to the Commission's Public Notice requesting comment on the above-captioned petition filed by BellSouth, SBC and Verizon (the "RBOC Petition").¹

I. INTRODUCTION AND SUMMARY

MFN is a leader in the deployment of optical infrastructure used to provide advanced telecommunications services within key metropolitan areas in the United States and abroad. MFN is certificated as a competitive local exchange carrier ("CLEC") in 39 states. MFN offers a variety of services, including inter- and intra-city transport, and competitive access services, in which MFN provides transmission capacity to end user locations. These services are

¹ *Pleading Cycle Established for Comments on Joint Petition of BellSouth, SBC and Verizon*, CC Docket No. 96-98, Public Notice, DA 01-911 (rel. Apr. 10, 2001) ("Public Notice"); *Common Carrier Bureau Grants Motion for Extension of Time for Filing Comments and Reply Comments on BOC Joint Motion Regarding Unbundled Network Elements*, CC Docket No. 96-98, Public Notice, DA 01-1041 (rel. Apr. 23, 2001).

provided over MFN's own fiber optic facilities, and over unbundled network elements obtained from incumbent local exchange carriers ("ILECs").

Where MFN has not deployed its own optical fiber directly to end user locations, MFN intends to interconnect directly with the ILEC at the ILEC central office using a fiber distribution frame ("FDF"), and purchases unbundled dark fiber loops or transport from the ILEC. In effecting these arrangements, MFN has negotiated a variety of agreements with ILECs that establish innovative approaches to interconnection, collocation, and access to unbundled network elements to support MFN's provision of competitive transport.

However, in some instances, MFN has been hamstrung in its ability to gain access to forms of interconnection necessary to obtain ILEC dark fiber UNEs and to gain access to CLECs that are customers of MFN's competitive transport. In particular, SBC has been doing everything in its power to prevent CLECs from gaining access to the facilities necessary to provide competitive transport, and has been unwilling to provide MFN with access to dark fiber UNE loops or transport. MFN appends to these comments a copy of comments that MFN filed in CC Docket 00-217, on SBC's Joint Application for 271 authority in Kansas and Oklahoma.² Those comments articulate how SBC has used a variety of tactics to ignore the interconnection agreements it had negotiated with MFN, and to deny MFN collocation and interconnection for almost three years. The SBC actions described in those comments – to which SBC has not responded – have effectively precluded MFN's market entry into SBC territory and have effectively denied CLECs access to competitive transport services. In light of such behavior, the

² See Comments of Metromedia Fiber Network Services, Inc., CC Docket 00-217 (filed Nov. 15, 2000) appended hereto as Exhibit 1.

assertion of the RBOCs in their Petition that there exists today “a vibrant wholesale market for high-capacity loops and dedicated transport” is stunningly inaccurate.³

Without blushing, the RBOC Petition asserts that “dedicated transport facilities are available wherever there is likely to be demand for them,” and what’s more, asserts that this availability is owing to the fact that “[c]ompetitors have collocated in the principal ILEC central offices serving customers of those services” and have done so with “no material delays or expense.”⁴ Indeed, the RBOC Petition asserts that collocation deployment by RBOCs, and SBC specifically, are a conclusive indicia that “implementation delays associated with establishing alternative transport facilities are largely in the past. Put another way, the timeliness issues have diminished in an inverse relationship to the growth in ubiquity.”⁵

The RBOC Petition’s characterization of the existing competitive transport market clashes violently with the actual experience of MFN with all of the large ILECs. For example, this Commission ordered ILECs to provide dark fiber UNEs by May 2000. Despite this unequivocal language, all of the RBOCs took the position that existing interconnection agreements must be amended before the dark fiber UNEs could be provided. It has taken MFN almost one year of ongoing discussions to negotiate the amendments to its interconnection agreements with BellSouth, GTE, Verizon and Qwest (true to form, SBC has refused to negotiate a dark fiber UNE amendment). Now, before a single dark fiber loop has been provisioned pursuant to these amended agreements, the RBOCs are arguing that the UNEs should be eliminated.

³ RBOC Petition, 3.

⁴ RBOC Petition, 5.

⁵ *Id.*

As MFN discusses in these reply comments, competitive transport is by no means ubiquitously available. MFN submits that the Commission must make demonstrably unfettered access to competitive transport a necessary precondition of “delisting” transport UNEs from the national list of UNEs that must be provided by ILECs. MFN proposes herein that the Commission adopt a test in order to ascertain whether an ILEC is in compliance with its obligation to provide high-capacity loops and transport that would be easily administered by the Commission and would eliminate the *seriatim* approach to “delisting” UNEs that the RBOCs implicitly advocate in their Petition.

II. AS A PRECONDITION TO THE REMOVAL OF ANY TRANSPORT UNE, ILECS MUST DEMONSTRATE MEANINGFUL AND EFFECTIVE ACCESS TO COMPETITIVE TRANSPORT

As indicated above, MFN operates both as a provider of intercity, intracity and local transmission capacity to other carriers, and to end users. For its local service applications, MFN interconnects directly with the ILEC at the central office using an FDF, and purchases unbundled dark fiber loops or transport from the ILEC where MFN has not yet built out its own competitive transport facilities. MFN provides competitive transport to End User Customers, Enterprise Customers, ILECs, Carriers and CLECs in the areas it serves.

MFN concurs with the assessments of every CLEC that filed comments in the initial round of this proceeding, who concluded that competitive transport alternatives are simply not available “as a practical, economic, and operational matter, such that a requesting carrier’s ability to provide the services it seeks to offer would not be impaired without access to the incumbent’s ubiquitous transmission facilities.”⁶ Indeed, the comments of filed in this proceeding clearly demonstrate that much more market development must take place before the

⁶ Cbeyond Comments quoting *UNE Remand Order*, ¶ 333.

wholesale dedicated transport market can be considered robust enough so that CLECs would not be impaired without access to UNE dedicated transport.⁷ Not only would pure CLECs be impaired without access to unbundled transport, but competitive providers of transport continue to require access to it as well. As the Coalition of Competitive Fiber Providers (“CFP”) acknowledged, their own networks “do not now provide a ubiquitous substitute for” unbundled ILEC facilities.⁸ Moreover, Broadslate pointed out that in almost every case where it requires high capacity transport to connect its ILEC central office collocation arrangements, the only alternative available to them is the ILEC network.⁹ Indeed, across the board, new entrants, including alternative transport providers, rely heavily upon ILEC high capacity loops and transport in order to execute their business plans.¹⁰ As evidenced by the comments in this proceeding, it undeniably remains the case that “the competitive transport facilities that currently exist do not interconnect all of an incumbent LEC’s central offices and all interexchange carrier’s [sic] points of presence within an MSA, or even a substantial portion thereof.”¹¹ Accordingly, absent a showing that access to competitive transport exists, the Commission should not reverse its decision to require unbundled access to the ILECs’ dedicated transport networks.

⁷ See e.g., Allegiance/Focal Comments, 18-22; Covad Comments, 6-8; Copper Mountain Comments, 6-7.

⁸ CFP Comments, 5.

⁹ Joint Comments of Broadslate, RCN and Telergy (“Broadslate Comments”), 25-26.

¹⁰ Joint Comments of El Paso Networks and Global Broadband (“El Paso Comments”), 13-15.

¹¹ *UNE Remand Order*, ¶ 333.

A. MFN Provides Competitive Transport Products Using a Variety of Arrangements

As a carrier's carrier, MFN provides service through a variety of innovative collocation and interconnection arrangements. As a result of protracted and contentious negotiations, often with the assistance of state PUCs and the Commission, MFN has concluded collocation and interconnection arrangements which allow it to provide competitive fiber transport to its own CLEC operations and to other carriers. MFN has reached separate, multi-state agreements with the several ILECs to establish dark fiber interconnection in each of their central offices. Through these interconnection and collocation arrangements, MFN provides service to a wide variety of carriers, including CLECs, full-service CLECs, and B-LECs, using state of the art technology including SONET, ATM, DWDM. As MFN offers end to end optical it is critical to know where ILEC dark fiber is in order to plan collocation in central offices that have fiber distribution to end users and buildings that MFN can access via UNE's. Qwest has taken a proactive and cooperative approach to providing MFN access to its dark fiber database, which allows MFN to quickly and efficiently plan collocation to interconnect with loops and transport to extend its reach using bottleneck facilities.

MFN interconnects with its CLEC, customers in a number of ways. If a CLEC is located on MFN's own metropolitan fiber ring, MFN is able to directly interconnect with that CLEC without ILEC facilities. MFN also accesses CLECs in ILEC central offices. This is a particularly efficient means of reaching CLEC customers because ILEC central offices are a natural point of aggregation for CLECs, IXCs and other carriers that purchase competitive transport.

Access to CLECs through ILEC central offices is accomplished through different configurations that fit generally within two categories: agreement negotiated pursuant to

Sections 251-252 of the Communications Act, and contracts negotiated outside of Sections 251-252. MFN has negotiated Section 251-252 interconnection agreements with all of the major ILECs. As discussed below, most RBOCs—with the notable exception of SBC—are implementing these agreements in a way that facilitates MFN's provision of competitive transport to CLECs. For example, BellSouth, and the former GTE have both agreed to allow MFN to pull high-fiber-count (432-fibers) cables to a universally accessible distribution point within their central offices to interconnect with the ILECs' UNEs and services, as well as cross-connect MFN's fiber to other collocated CLECs. MFN serves both its own end-user customers and provides fiber to other carriers using this arrangement.

In the second category are non-Section 251 contractual agreements where MFN establishes forms of collocation without being required to purchase UNEs directly from the ILEC. MFN has such agreements with Verizon and former GTE. MFN negotiated the first such agreement with Bell Atlantic. This arrangement, known as Competitive Alternate Transport Terminal ("CATT"), is technically equivalent to cageless collocation, and allows MFN to extend its multiple high-count dark fiber directly to a universally accessible distribution point within the ILEC's central office – typically, in the ILEC's cable vault – thereby enabling MFN to offer CLECs access to unlimited bandwidth. CATT eliminates multiple fiber pulls into the central office thereby reducing space constraints, eliminating premature space exhaustion, and minimizing engineering time and expenses for both the collocated CLECs and the ILEC.

Subsequently, MFN negotiated an agreement with GTE which obtains the same result – collocation in the central office for the purpose of supplying fiber to other carriers – through a different method. MFN's interconnection agreement with GTE recognizes that MFN is *indirectly* interconnected with GTE when MFN cross-connects with CLECs that purchase

GTE's UNEs. MFN's GTE agreement enables MFN to collocate in the ILEC central office for the purpose of providing fiber to CLECs, even though MFN itself is not purchasing UNEs directly from the GTE. The GTE agreement recognizes that MFN, through its direct interconnection with the CLEC and indirect interconnection with the ILEC, is interconnected for the purposes of 251(c)(2) and 251(c)(6), and thereby entitled to collocation. These arrangements are flexible and allow for the most efficient solution for both competitive transport providers and ILECs.

In addition to innovative collocation arrangements described above, the one RBOC that opposed this petition, Qwest, has a refreshing and cooperative approach to providing information regarding which central offices contain dark fiber, a dramatic departure from its RBOC brethren. Qwest is attempting to foster development of the competitive transport market by providing carriers with unfettered access to Qwest's dark fiber inventory through an accessible database. Qwest has a Loop Fiber Inventory Tool ("LFIT") on its web site that identifies customer premises locations, by state, by wire center that it serves with fiber.¹² This tool identifies total fibers, working fibers, restricted fibers and spare fibers at those customer premises locations which helps MFN ascertain which offices it is necessary to collocate in. While Qwest doesn't guarantee the accuracy of the information contained in the LFIT (dark fiber inquiries must still be submitted), the LFIT can be used to reduce the number of fruitless requests that potentially could be submitted if the information wasn't available. Besides providing access to the LFIT, Qwest has recognized that in order to access the dark fiber UNE, carriers will need to collocate multi-functional equipment in central offices, and that carriers must have access to

¹² The Loop Fiber Inventory Tool can be found on Qwest's web site at: www.qwest.com/wholesale/loopfiberinventory.html.

the appropriate equipment and functionality's in order to maximize network efficiency.¹³ In taking this reasonable and common-sense approach, Qwest is provisioning fiber loops the same way it provides copper-based UNEs: by providing information up front as to the availability, quality, and capacity of the fiber. In contrast, the other RBOCs treat fiber loops differently, requiring that the requesting carrier first request a record search location by location to determine if spare fiber capacity exists. By withholding the fiber information until a specific request is made, the RBOCs are imposing unnecessary delay in the process of obtaining fiber-based loops and denying competitors access to information that they freely share with their internal sales channels. All RBOCs should be required to provide the same no-cost, up-front information regarding the availability of dark fiber and other fiber-based loops as an integral part of their unbundling obligations.

The only ILEC who has refused to cooperate with MFN to implement pro-competitive and efficient collocation arrangements is SBC. MFN negotiated interconnection agreements with SBC in Illinois and Texas over a year ago, but to date has been hamstrung in its ability to implement them. The SBC agreement allows MFN to distribute dark fiber to its CLEC and other carrier customers through a permanently assigned entrance facility without requiring MFN to interconnect with unbundled elements. In addition, MFN negotiated with SBC the right to build its fiber network to specific entry points around SBC central offices designated by MFN. These provisions are all that MFN needs to efficiently provide its competitive transport services to CLECs collocated within SBC central offices, and to obtain access to SBC's dark fiber or high capacity loop UNEs. Subsequent to signing these negotiated arrangements, however, SBC has taken the position that MFN may not collocate fiber cross connect panels in SBC central offices,

¹³ Qwest Comments, 13 (filed Oct. 12, 2000 in CC Docket Nos. 98-147, 96-98).

and has cancelled MFN collocation requests in Texas and Illinois thereby rendering the interconnection agreements useless.

Beginning in March 2000, MFN entered into mediation with SBC, supervised by the Enforcement Bureau Staff. A number of issues were discussed, including whether MFN could collocate in SBC central offices and cross-connect to other collocated CLECs. During the ensuing weeks, it appeared that MFN and SBC had found a way to resolve their disagreements over these issues. However, at the very point when these matters seemed to be resolved, SBC argued that MFN could not collocate Fiber Distribution Frames within an SBC central office. MFN has appended to this reply a copy of comments filed with the Commission in CC Docket No. 00-217, which discuss SBC's actions in more detail, and provide a copy of a letter from SBC denying MFN's requests for collocation in eight central offices.

Despite the best efforts of MFN and the Commission's Enforcement Bureau to resolve this issue, SBC clings to its untenable position, clearly motivated by a desire to prevent collocated CLECs from obtaining efficient access to MFN's competitive transport, and to prevent MFN from gaining access to SBC's dark fiber and high capacity loop UNEs. This behavior should not come as any surprise to the Commission, which in recent weeks has meted out fines against SBC for failure to comply with its procompetitive commitments under the SBC/Ameritech Merger¹⁴ and for failure to comply with the Commission's rules.¹⁵ These fines are will, unfortunately, not discourage anti-competitive behavior by SBC. With respect to MFN, SBC has ignored Commission orders to offer dark fiber, cancelled collocation orders of the same

¹⁴ See "FCC Affirms \$88,000 Fine Against SBC for Failing to Comply with Merger Conditions," PN regarding Order on Review (FCC 01-184) (May 29, 2001).

¹⁵ See "FCC Enforcement Bureau Imposes \$94,500 Fine Against SBC For Violations Of Local Competition Rule," PN regarding Order of Forfeiture (DA 01-1273) (May 24, 2001).

kind that every other RBOC has accepted, and refused to negotiate a thirteen state interconnection agreement with MFN which would allow MFN to use an FDF to interconnect MFN fiber with SBC dark fiber UNE's. This is clearly a blatant abuse of monopoly power to delay competitive entry into SBC markets, and SBC is relying upon the Commission to make sure the penalty doesn't fit the crime.

In the face of SBC's intransigent and legally unsupportable position, MFN has sought to address this situation through proposed changes and clarifications to the Commission's collocation rules. Specifically, MFN has urged the Commission to require that ILECs provide a cross-connect service that would allow collocated CLECs to cross-connect to competitive transport providers within the central office.¹⁶ In addition, in the instant proceeding, MFN asks the Commission to take a further step, as discussed below.

III. THE COMMISSION SHOULD MAKE CLEAR THAT UNFETTERED ACCESS TO ILEC FACILITIES USED TO PROVIDE COMPETITIVE TRANSPORT IS A CONDITION PRECEDENT TO A FINDING THAT A TRANSPORT UNE MAY BE "DELISTED"

Commenters unanimously agree that under no circumstances could a competitive market for high-capacity UNE loops and transport be said to exist, and accordingly, under no

¹⁶ As MFN explained in its comments filed on October 12, 2000 in CC Dockets 98-147 and 96-98, Section 251(c)(6) of the Act imposes upon ILECs the duty "to provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements" at the ILEC's premises. Section 251(a) of the Act provides that all telecommunications carriers have the duty "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers." Section 251(c)(2) of the Act obligates ILECs to "provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access," and to provide "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point." MFN's cross-connect proposal has received widespread support among CLECs.

circumstances could the Commission entertain the RBOC Petition.¹⁷ In order to alleviate the need to establish a notice and comment proceeding each and every time an RBOC throws a spurious and factually unsupported petition, such as the instant petition, into the Commission's lap, MFN submits that the Commission should establish a test to determine whether, in fact a competitive transport market exists in a given ILEC territory and therefore, whether high capacity dedicated transport may be eliminated as a UNE.

This test should include the following analysis whenever an ILEC petitions the Commission for elimination of dedicated transport as a UNE. The Commission should inquire as to whether any complaint is pending in the relevant territory, either before a federal or state regulatory body or court, showing that the ILEC is inhibiting access to competitive transport services. To the extent that any such actions are pending, a *prima facie* case will be established that unfettered access to competitive transport is not available. The pendency of such a complaint will establish a presumption that the elimination of the ILEC's transport UNE would not meet the "impair" test, and would compel rejection of the ILECs request to "delist" that UNE.

Other Commenters supported similar "stringent, geographically discreet" criteria for eliminating UNEs. For example, the New York Department of Public Service proposed that the Commission adopt specific criteria that would be applied, possibly on an MSA by MSA basis, to determine if delisting of the transport UNE is appropriate.¹⁸ MFN submits that the Commission should not abandon its triennial review process, but should incorporate into that process a self-executing test that would quickly and efficiently allow the Commission to make

¹⁷ See e.g. AES Comments, 7; Allegiance/Focal Joint Comments, 21; Broadslate Comments, 15-18; Cbeyond Joint Comments, 21-25; Covad Comments, 7-9; Sprint Comments, 7-9; TDS Comments, 6-7; XO Comments, 12-14.


the determinations sought by the RBOCs without unduly draining the Commission's or the industry's resources.

IV. CONCLUSION

The RBOC Petition fails to show that CLECs have ready access to transport from competitive service providers. The unbundling of high capacity loop and dedicated transport UNEs are more important than ever, as few competitors currently have access to sufficient funding necessary for self-provisioning of middle and last mile broadband connectivity on anything more than a small-scale, *ad hoc* basis.

To meet the requirements of the Communications Act, the Commission should adopt a test to apply to any "impair" analysis. Specifically, upon an ILEC request for elimination of transport as a UNE, the Commission should inquire whether any regulatory or court action is pending that shows that ILECs are inhibiting CLEC access to competitive transport services. The existence of such a pending complaint or suit should establish a prima facie assumption that competitive alternatives are not sufficiently available to allow elimination of transport as a UNE.

Respectfully submitted,

By: 
Jonathan E. Canis
Ross A. Buntrock
KELLEY DRYE & WARREN, LLP
1200 19th Street, N.W., Suite 500
Washington, D.C. 20036
(202) 955-9600

¹⁸ NYDPS Comments, 4.

CERTIFICATE OF SERVICE
CC Docket No. 96-98

Copies of the foregoing Reply Comments of Metromedia Fiber Network Services, Inc. were served on June 25, 2001 via courier on the following persons.

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
(original plus seven copies)

Bryan Tramont
Senior Legal Advisor
Office of Commissioner
Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Kyle Dixon
Legal Advisor
Office of Chairman
Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Kdixon@fcc.gov

Paul Gallant
Senior Legal Advisor
Office of Commissioner
Gloria Tristani
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Pgallant@fcc.gov

Jordan Goldstein
Senior Legal Advisor
Office of Commissioner
Michael J. Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Dorothy Attwood
Bureau Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Dattwood@fcc.gov

Jeffrey J. Carlisle
Senior Deputy Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Jcarlisl@fcc.gov

Glen Reynolds
Deputy Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Greynold@fcc.gov

Michelle Carey
Chief Policy and Program Planning
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Mcarey@fcc.gov

Julie Veach
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Jveach@fcc.gov

Jeremy Miller
Common Carrier Bureau
Policy Division
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Jmiller@fcc.gov

Daniel R. Shiman
Industry Economist
Common Carrier Bureau
Policy Division
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Dshiman@fcc.gov

Jonathan Reel
Common Carrier Bureau
Policy Division
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554
Jreel@fcc.gov

Legal Advisor
Office of Commissioner
Keven J. Martin
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Jodie Donovan-May
Legal Advisor
Common Carrier Bureau
Policy Division
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Janice Myles
Common Carrier Bureau
Policy Division
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

International Transcription Services
1231 20th Street, N.W.
Washington, DC 20036

EXHIBIT I

**Before the
Federal Communications Commission
Washington, DC 20554**

| | | |
|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| |) | |
| Joint Application by SBC Communications, Inc., |) | CC Docket No. 00-217 |
| Southwestern Bell Telephone Company, and |) | |
| Southwestern Bell Communications Services, |) | |
| Inc. d/b/a Southwestern Bell Long Distance |) | |
| for Provision of In-Region, InterLATA |) | |
| Services in Kansas and Oklahoma |) | |
| |) | |

**Comments of
Metromedia Fiber Network Services, Inc.**

Karen Nations
Senior Attorney
Metromedia Fiber Network Services, Inc.
One Meadowlands Plaza
East Rutherford, NJ 07073
(201) 531-8053

November 15, 2000

SUMMARY

Metromedia Fiber Network Services, Inc. ("MFNS") submits its comments on the application filed by SBC Communications, Inc. and its subsidiaries, Southwestern Bell Telephone Company ("SWBT") and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance (collectively, "SBC"). SBC filed an application with the Federal Communications Commission ("Commission") on October 26, 2000 for authority to offer interLATA services in Kansas and Oklahoma pursuant to section 271 of the Telecommunications Act of 1934, as amended ("the Act"). 47 U.S.C. § 271. The Commission issued a Public Notice on October 26, 2000 seeking comments on SBC's application by interested third parties.

As a telecommunications services provider,¹ carriers' carrier and facilities provider, MFNS has the critical need to have ready access to all Incumbent Local Exchange Carrier ("ILEC") central offices in order to build its high-bandwidth, fiber optic communications infrastructure and offer competitive telecommunications services to its customers.

The Commission should deny SBC's application. SBC has failed to completely open its network to competition and refused to permit lawful collocation and interconnection using excuses that often change like the wind, have no basis in law, and serve only to stall competition. If the Commission does approve SBC's application, it should condition the approval with the requirement that SBC must permit the collocation of only a fiber distribution frames (FDF) so that MFNS may *directly* interconnect to SBC Unbundled Network Elements (UNE) to offer telecommunications to its end users.

Despite submitting many collocation orders, SBC continues to deny MFNS collocation based on the position that a FDF is not sufficient equipment by itself to warrant collocation. SBC contradicts its statements in its application for interLATA relief concerning its willingness to provide interconnection and collocation to requesting carriers. This refusal to permit interconnection to MFNS clearly demonstrates that SBC's networks are not fully open to competition as required by the Act for the interLATA authority that SBC seeks in Kansas and Oklahoma.

¹ MFNS is a certified telecommunications service provider in 41 states and the District of Columbia. It was certified in Kansas on February 3, 2000. It was certified in Oklahoma on October 26, 2000.

Table of Contents

| | |
|---|-----------|
| <u>SUMMARY</u> | II |
| <u>TABLE OF CONTENTS</u> | IV |
| <u>I. INTRODUCTION</u> | 1 |
| <u>II. SBC HAS REPEATEDLY USED DELIBERATE CONFUSION OF THE ISSUES, SHAM ARGUMENTS, AND INADEQUATE COMMUNICATIONS AMONG MEMBERS OF ITS INTERCONNECTION TEAM TO DENY MFNS ITS RIGHTS UNDER § 251(C) OF THE ACT</u> | 3 |
| <u>III. CUSTOMERS AND TECHNOLOGY DESERVE MORE THAN WHAT SBC HAS OFFERED TO OPEN ITS MARKETS TO COMPETITION</u> | 13 |
| <u>IV. GIVEN SBC’S COMMENTS IN THE COMMISSION’S COLLOCATION RULEMAKING, IT IS CLEAR SBC IS NOT READY TO COMPETE FAIRLY AND SHOULD NOT BE GRANTED THE REQUESTED AUTHORITY</u> | 15 |
| A. SBC ENCOURAGES THE STATUS QUO FOR COMPETITIVE CARRIERS..... | 15 |
| B. SBC CANNOT COMPLAIN IN ONE PROCEEDING THAT COLLOCATED EQUIPMENT TAKES UP TOO MUCH ROOM AND IN ANOTHER PROCEEDING REQUIRE IT | 17 |
| <u>V. CONCLUSION</u> | 19 |

**Before the
Federal Communications Commission
Washington, DC 20554**

| | | |
|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| |) | |
| Joint Application by SBC Communications, Inc., |) | CC Docket No. 00-217 |
| Southwestern Bell Telephone Company, and |) | |
| Southwestern Bell Communications Services, |) | |
| Inc. d/b/a Southwestern Bell Long Distance |) | |
| for Provision of In-Region, InterLATA |) | |
| Services in Kansas and Oklahoma |) | |
| |) | |

**Comments of
Metromedia Fiber Network Services, Inc.**

I. Introduction

MFNS is a leader in providing dedicated fiber optical infrastructure and high-bandwidth advanced services for communications intensive customers throughout the nation. MFNS is leading the country's transition from a legacy copper telecommunications infrastructure to a fiber infrastructure.

MFNS or its affiliates currently provide high-bandwidth fiber optic communications facilities in New York, Philadelphia, Washington, D.C., Chicago, Dallas, San Francisco, and Boston offering telecommunications services and network elements to carriers and end user customers. Within the next several years MFNS plans to complete expansion into 50 U.S. markets. MFNS intends to start providing service in Kansas within the next few months.

MFNS endeavors to compete directly with incumbent local exchange carriers ("ILECs") including Southwestern Bell Telephone Company ("SWBT") and the other SBC

ILECs in the provision of interoffice transport to competitive local exchange carriers (“CLECs”) and others and telecommunications services to end users. In the Commission’s current Collocation Rulemaking,² SBC’s competitors and equipment manufacturers recognize the need for that transition infrastructure transition to an open and robust competition and cite many examples where ILEC networks -- including SBC’s -- are not open to competition. The comments filed in that proceeding and this proceeding will demonstrate that SBC is not entitled to interLATA relief in Kansas and Oklahoma.

As a facilities provider and competitive carrier, MFNS is in a unique position to facilitate telecommunications competition by providing state-of-the-art facilities to telecommunications service providers anxious to serve end-user customers but unable to build their networks in a time responsive and cost effective manner without help from a facilities provider such as MFNS. MFNS also provides technically advanced services to bandwidth-hungry customers. MFNS’ comments to the Commission on SWBT’s actions to prevent full and robust competition demonstrate SWBT is not ready to assume the responsibilities and privileges of section 271 of the Act.

In support of these comments, MFNS also submits the Affidavit of Robert Riordan (“Riordan Aff.”) attached hereto as Exhibit A. The affidavit attests to the facts that MFNS relies on within these comments.

² In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, and Implementation of the Local Competition Provision of the Telecommunications Act of 1996, CC Docket No. 96-98, rel. August 10, 2000. (*Collocation Rulemaking*)

II. SBC HAS REPEATEDLY USED DELIBERATE CONFUSION OF THE ISSUES, SHAM ARGUMENTS, AND INADEQUATE COMMUNICATIONS AMONG MEMBERS OF ITS INTERCONNECTION TEAM TO DENY MFNS ITS RIGHTS UNDER § 251(c) OF THE ACT

MFNS has negotiated or opted into state-approved interconnection agreements with SBC in Illinois and Texas. Riordan Aff. ¶¶ 7-8. MFNS is attempting to negotiate an interconnection agreement for the remaining 11 states in the SBC region. Those negotiations are at an impasse because of SBC's refusal to process MFNS' lawful collocation orders in Illinois and Texas. Riordan Aff. ¶ 9. That impasse denies MFNS the ability to serve customers in those states. Despite negotiating collocation implementation for more than 1½ years, SBC still refuses to provide MFNS with collocation that it requires, is entitled to, and provides for under these agreements. SBC's behavior during this time has consisted of making and reneging on commitments to MFNS, changing its legal arguments repeatedly, and introducing new asserted legal arguments when old issues have finally been resolved. As a result of the delay resulting from this erratic and indefensible behavior, MFN has been unable to provide service to waiting customers in both Illinois and Texas. Ironically, the Commission found that SBC's Texas network is open to competition and granted SBC's application to offer interLATA services in that state.³ Since this SBC policy is region-wide, applications for collocation and interconnection in Kansas and Oklahoma will be rejected for the same reason. Riordan Aff. ¶¶ 15-16.

³ Memorandum Opinion and Order, *Application by SBC Communications, Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLATA Services In Texas*, CC Docket No. 00-65, FCC 00-238 (rel. June 30, 2000) ("Texas Order"). This new "excuse" to refuse collocation of only a FDF and interconnection of UNEs started after the Texas 271 Order was issued. Riordan Aff. ¶ 13.

SBC refuses to permit collocation and interconnection for the purposes of serving end user customers by MFNS collocating only a FDF within the SBC central office. SBC refuses to permit such collocation arguing that: (1) section 251(c) requires collocation of equipment for interconnection with the LEC's network; and (2) a FDF is not equipment, but rather a facility, because it does not draw power. SBC claims the language of § 251 supports this position. Even a narrow reading of section 251 does not support such an interpretation of section 251.

Neither the Act nor the Commission's Rules restrict the type of equipment that a competitive carrier may locate on the basis of its power consumption. In fact, both the statute and the Commission's rules expressly provide otherwise. Indeed, the Commission's rules expressly provide that a requesting carrier such as MFNS *shall not be required* to collocate its own transmission equipment as a prerequisite to obtaining collocation in the ILEC central office. A piece of equipment's power consumption does not have anything to do with equipment being necessary or labeling it necessary. A FDF is necessary for the interconnection on UNEs although it does not have to be plugged in. Those are not inconsistent positions.

SBC has made it clear that this position is a region-wide position for all 13 states in which SBC is the Incumbent LEC. Riordan Aff. ¶¶ 15-16. MFNS will not be permitted to collocate only a FDF or to interconnect with SBC UNEs in Kansas or Oklahoma until SBC is ordered to do so by the Commission. Even SWBT acknowledges that collocation orders in Kansas will be handled the same way they are in Texas.⁴

⁴ "Shawn M. McKenzie, president of Southwestern Bell-Kansas, said the telco's terms and conditions for carrier interconnection and network unbundling in Kansas are 'based substantially' on those adopted in Texas." *Telecommunications Reports*, October 30, 2000, p. 14.

While SBC has been unyielding in its opposition to MFN's attempts to roll out its service, MFN has suggested alternative network configurations to satisfy SBC's objections. For instance, MFN has proposed to forego physical collocation under § 251 of the Communications Act, and accept virtual collocation that SBC routinely provides to customers under its federal tariff. To date, MFNS' virtual collocation compromises have been rejected or ignored.

Using a variety of ever changing and increasingly less tenable legal arguments, SBC has bitterly opposed MFNS' every attempt to order collocation and access to UNEs under its approved interconnection agreements. Where SBC has no legal arguments, it has resorted to stonewalling and bad faith negotiating tactics. These tactics are also reflected in the comments filed by in the Collocation Rulemaking.

In MFNS' filing in opposition to SBC's Texas application,⁵ MFN described that it negotiated an interconnection agreement with Ameritech in the weeks prior to approval of Ameritech's merger with SBC. Correspondence between MFN and the Ameritech negotiator make clear that MFN may collocate fiber cross-connect panels in a cageless physical collocation arrangement, pull its high-count fiber into the collocation arrangement from a single, defined manhole, and establish dark-fiber cross-connects to other collocated carriers. After the SBC merger was completed, SBC rescinded Ameritech's commitments on these documented commitments, and refused to provide similar arrangements in Texas.⁶

SBC has raised a series of issues in an attempt to explain its refusal to fulfill its commitments to MFN and its obligations under the Act. At different times, SBC has

⁵ Texas Order, comments of Metromedia Fiber Network Services, Inc. filed January 31, 2000.